

[COMMITTEE PRINT]

JULY 20, 2000

**[As Approved by the Subcommittee on Employer-Employee
Relations on July 19, 2000]**

106TH CONGRESS
2D SESSION

H. R. 4747

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2000

Mr. BOEHNER (for himself, Mr. GOODLING, Mr. PORTMAN, Mr. PETRI, Mr. BALLENGER, and Mr. HOEKSTRA) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on June 26, 2000]

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment

advice to workers managing their retirement income assets.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Retirement Security Ad-*
5 *vice Act of 2000”.*

6 **SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**
7 **PROVISION OF INVESTMENT ADVICE.**

8 *(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT*
9 *INCOME SECURITY ACT OF 1974.—*

10 *(1) IN GENERAL.—Section 408(b) of the Em-*
11 *ployee Retirement Income Security Act of 1974 (29*
12 *U.S.C. 1108(b)) is amended by adding at the end the*
13 *following new paragraph:*

14 *“(14) If the requirements of subsection (g) are*
15 *met—*

16 *“(A) the provision of investment advice re-*
17 *ferred to in section 3(21)(A)(ii) provided by a fi-*
18 *ducuary adviser (as defined in subsection*
19 *(g)(4)(A)) to an employee benefit plan or to a*
20 *participant or beneficiary of an employee benefit*
21 *plan,*

22 *“(B) the sale, acquisition, or holding of se-*
23 *curities or other property (including any lending*
24 *of money or other extension of credit associated*

1 *with the sale, acquisition, or holding of securities*
2 *or other property) pursuant to such investment*
3 *advice, and*

4 “(C) *the direct or indirect receipt of fees or*
5 *other compensation by the fiduciary adviser or*
6 *an affiliate thereof (or any employee, agent, or*
7 *registered representative of the fiduciary adviser*
8 *or affiliate) in connection with the provision of*
9 *such investment advice.”.*

10 (2) *REQUIREMENTS.*—*Section 408 of such Act is*
11 *amended further by adding at the end the following*
12 *new subsection:*

13 “(g)(1) *The requirements of this subsection are met in*
14 *connection with the provision of advice referred to in section*
15 *3(21)(A)(ii), provided to an employee benefit plan or a par-*
16 *ticipant or beneficiary of an employee benefit plan by a*
17 *fiduciary adviser with respect to such plan, in connection*
18 *with any sale or acquisition of a security or other property*
19 *for purposes of investment of amounts held by such plan,*
20 *if—*

21 “(A) *in the case of the initial provision of such*
22 *advice with regard to a security or other property, by*
23 *such fiduciary adviser to such plan, participant, or*
24 *beneficiary, the fiduciary adviser provides to the re-*
25 *cipient of such advice, at the time of or before the ini-*

1 *tial provision of such advice, a clear and conspicuous*
2 *description, in writing (including by means of elec-*
3 *tronic communication), of—*

4 *“(i) all fees or other compensation relating*
5 *to such advice that the fiduciary adviser or any*
6 *affiliate thereof is to receive (including com-*
7 *penetration provided by any third party) in con-*
8 *nection with the provision of such advice or in*
9 *connection with such acquisition or sale,*

10 *“(ii) any material affiliation or contractual*
11 *relationship of the fiduciary adviser or affiliates*
12 *thereof in such security or other property,*

13 *“(iii) any limitation placed on the scope of*
14 *the investment advice to be provided by the fidu-*
15 *ciary adviser with respect to any such sale or ac-*
16 *quisition, and*

17 *“(iv) the types of services offered by the fi-*
18 *duciary advisor in connection with the provision*
19 *of investment advice by the fiduciary adviser,*

20 *“(B) in the case of the initial or any subsequent*
21 *provision of such advice to such plan, participant, or*
22 *beneficiary, the fiduciary adviser, throughout the 1-*
23 *year period following the provision of such advice,*
24 *maintains the information described in clauses (i)*
25 *through (iv) of subparagraph (A) in currently accu-*

1 *rate form for availability, upon request and without*
2 *charge, to the recipient of such advice,*

3 “(C) *the fiduciary adviser provides appropriate*
4 *disclosure, in connection with any such acquisition or*
5 *sale, in accordance with all applicable securities laws,*

6 “(D) *such acquisition or sale occurs solely at the*
7 *direction of the recipient of such advice,*

8 “(E) *the compensation received by the fiduciary*
9 *adviser and affiliates thereof in connection with such*
10 *acquisition or sale is reasonable, and*

11 “(F) *the terms of such acquisition or sale are at*
12 *least as favorable to such plan as an arm’s length*
13 *transaction would be.*

14 “(2) *A fiduciary adviser referred to in paragraph (1)*
15 *who has provided advice referred to in such paragraph*
16 *shall, for a period of not less than 6 years after the provi-*
17 *sion of such advice, maintain any records necessary for de-*
18 *termining whether the requirements of the preceding provi-*
19 *sions of this subsection and of subsection (b)(14) have been*
20 *met. A prohibited transaction provided in section 406 shall*
21 *not be considered to have occurred solely because the records*
22 *are lost or destroyed prior to the end of the 6-year period*
23 *due to circumstances beyond the control of the fiduciary ad-*
24 *viser.*

1 “(3)(A) Subject to subparagraph (B), a plan sponsor
2 or other person who is a fiduciary shall not be treated as
3 failing to meet the requirements of this part solely by reason
4 of the provision of investment advice referred to in section
5 3(21)(A)(ii) (or solely by reason of contracting for or other-
6 wise arranging for the provision of such investment advice),
7 if—

8 “(i) such advice is provided by a fiduciary ad-
9 viser pursuant to an arrangement between such plan
10 sponsor or other fiduciary and such fiduciary adviser
11 for the provision by such fiduciary adviser of invest-
12 ment advice referred to in such section, and

13 “(ii) the terms of such arrangement require com-
14 pliance by the fiduciary adviser with the require-
15 ments of this subsection.

16 “(B) Nothing in subparagraph (A) shall be construed
17 to exempt a plan sponsor or other person who is a fiduciary
18 from any requirement of this part for the prudent selection
19 and periodic review of a fiduciary adviser with whom the
20 plan sponsor or other person enters into an arrangement
21 for the provision of advice referred to in section
22 3(21)(A)(ii). Such plan sponsor or other person who is a
23 fiduciary has no duty under this part to monitor the spe-
24 cific investment advice given by the fiduciary adviser to
25 any particular recipient of such advice.

1 “(C) *Nothing in this part shall be construed to pre-*
2 *clude the use of plan assets to pay for reasonable expenses*
3 *in providing investment advice referred to in section*
4 *3(21)(A)(ii).*

5 “(4) *For purposes of this subsection and subsection*
6 *(b)(14)—*

7 “(A) *The term ‘fiduciary adviser’ means, with*
8 *respect to a plan, a person who is a fiduciary of the*
9 *plan by reason of the provision of investment advice*
10 *by such person to the plan or to a participant or ben-*
11 *eficiary and who is—*

12 “(i) *registered as an investment adviser*
13 *under the Investment Advisers Act of 1940 (15*
14 *U.S.C. 80b–1 et seq.) or under the laws of the*
15 *State in which the fiduciary maintains its prin-*
16 *cipal office and place of business,*

17 “(ii) *a bank or similar financial institution*
18 *referred to in section 408(b)(4),*

19 “(iii) *an insurance company qualified to do*
20 *business under the laws of a State,*

21 “(iv) *a person registered as a broker or*
22 *dealer under the Securities Exchange Act of 1934*
23 *(15 U.S.C. 78a et seq.),*

24 “(v) *an affiliate of a person described in*
25 *any of clauses (i) through (iv), or*

1 “(vi) an employee, agent, or registered rep-
2 resentative of a person described in any of
3 clauses (i) through (v).

4 “(B) The term ‘affiliate’ means an affiliated per-
5 son, as defined in section 2(a)(3) of the Investment
6 Company Act of 1940 (15 U.S.C. 80a-2(a)(3)).

7 “(C) The term ‘registered representative’ means a
8 person described in section 3(a)(18) of the Securities
9 Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or sec-
10 tion 202(a)(17) of the Investment Advisers Act of
11 1940 (15 U.S.C. 80b-2(a)(17)).”.

12 (b) AMENDMENTS TO THE INTERNAL REVENUE CODE
13 OF 1986.—

14 (1) IN GENERAL.—Subsection (d) of section 4975
15 of the Internal Revenue Code of 1986 (relating to ex-
16 emptions from tax on prohibited transactions) is
17 amended—

18 (A) in paragraph (14), by striking “or” at
19 the end;

20 (B) in paragraph (15), by striking the pe-
21 riod at the end and inserting “; or”; and

22 (C) by adding at the end the following new
23 paragraph:

24 “(16) If the requirements of subsection (f)(7) are
25 met—

1 “(A) the provision of investment advice re-
2 ferred to in subsection (e)(3)(B) provided by a fi-
3 diciary adviser (as defined in subsection
4 (f)(7)(C)(i)) to a plan or to a participant or
5 beneficiary of a plan,

6 “(B) the sale, acquisition, or holding of se-
7 curities or other property (including any exten-
8 sion of credit associated with the sale, acquisi-
9 tion, or holding of securities or other property)
10 pursuant to such investment advice, and

11 “(C) the direct or indirect receipt of fees or
12 other compensation by the fiduciary adviser or
13 an affiliate thereof (or any employee, agent, or
14 registered representative of the fiduciary adviser
15 or affiliate) in connection with the provision of
16 such investment advice.”.

17 (2) REQUIREMENTS.—Subsection (f) of such sec-
18 tion 4975 (relating to other definitions and special
19 rules) is amended by adding at the end the following
20 new paragraph:

21 “(7) REQUIREMENTS FOR EXEMPTION FOR IN-
22 VESTMENT ADVICE PROVIDED BY FIDUCIARY ADVIS-
23 ERS.—

24 “(A) IN GENERAL.—The requirements of
25 this paragraph are met in connection with the

1 *provision of advice referred to in subsection*
2 *(e)(3)(B), provided to a plan or a participant or*
3 *beneficiary of a plan by a fiduciary adviser with*
4 *respect to such plan, in connection with any sale*
5 *or acquisition of a security or other property for*
6 *purposes of investment of amounts held by such*
7 *plan, if—*

8 *“(i) in the case of the initial provision*
9 *of such advice by such fiduciary adviser to*
10 *such plan, participant, or beneficiary, the*
11 *fiduciary adviser provides to the plan, par-*
12 *ticipant, or beneficiary, at the time of or be-*
13 *fore the initial provision of such advice, a*
14 *description, in writing or by means of elec-*
15 *tronic communication, of—*

16 *“(I) all fees or other compensation*
17 *relating to such advice that the fidu-*
18 *ciary adviser or any affiliate thereof is*
19 *to receive (including compensation*
20 *provided by any third party) in con-*
21 *nection with the provision of such ad-*
22 *vice or in connection with such acqui-*
23 *sition or sale,*

24 *“(II) any material affiliation or*
25 *contractual relationship of the fidu-*

1 *ciary adviser or affiliates thereof in*
2 *such security or other property,*

3 *“(III) any limitation placed on*
4 *the scope of the investment advice to be*
5 *provided by the fiduciary adviser with*
6 *respect to any such sale or acquisition,*
7 *and*

8 *“(IV) the types of services offered*
9 *by the fiduciary advisor in connection*
10 *with the provision of investment advice*
11 *by the fiduciary adviser,*

12 *“(ii) in the case of the initial or any*
13 *subsequent provision of such advice to such*
14 *plan, participant, or beneficiary, the fidu-*
15 *ciary adviser, throughout the 1-year period*
16 *following the provision of such advice,*
17 *maintains the information described in sub-*
18 *clauses (I) through (IV) of clause (i) in cur-*
19 *rently accurate form for availability, upon*
20 *request and without charge, to the recipient*
21 *of such advice,*

22 *“(iii) the fiduciary adviser provides*
23 *appropriate disclosure, in connection with*
24 *any such acquisition or sale, in accordance*
25 *with all applicable securities laws,*

1 “(iv) such acquisition or sale occurs
2 solely at the discretion of the recipient of
3 such advice,

4 “(v) the compensation received by the
5 fiduciary adviser and affiliates thereof in
6 connection with such acquisition or sale is
7 reasonable, and

8 “(vi) the terms of such acquisition or
9 sale are at least as favorable to such plan
10 as an arm’s length transaction would be.

11 “(B) MAINTENANCE OF RECORDS.—A fidu-
12 ciary adviser referred to in subparagraph (A)
13 who has provided advice referred to in such sub-
14 paragraph shall, for a period of not less than 6
15 years after the provision of such advice, main-
16 tain any records necessary for determining
17 whether the requirements of the preceding provi-
18 sions of this subsection and of subsection (d)(16)
19 have been met. A prohibited transaction de-
20 scribed in subsection (c)(1) shall not be consid-
21 ered to have occurred solely because the records
22 are lost or destroyed prior to the end of the 6-
23 year period due to circumstances beyond the con-
24 trol of the fiduciary adviser.

1 “(C) *DEFINITIONS.*—*For purposes of this*
2 *paragraph and subsection (d)(16)—*

3 “(i) *FIDUCIARY ADVISER.*—*The term*
4 *‘fiduciary adviser’ means, with respect to a*
5 *plan, a person who is a fiduciary of the*
6 *plan by reason of the provision of invest-*
7 *ment advice by such person to the plan or*
8 *to a participant or beneficiary and who*
9 *is—*

10 “(I) *registered as an investment*
11 *adviser under the Investment Advisers*
12 *Act of 1940 (15 U.S.C. 80b–1 et seq.)*
13 *or under the laws of the State in which*
14 *the fiduciary maintains its principal*
15 *office and place of business,*

16 “(II) *a bank or similar financial*
17 *institution referred to in subsection*
18 *(d)(4),*

19 “(III) *an insurance company*
20 *qualified to do business under the laws*
21 *of a State,*

22 “(IV) *a person registered as a*
23 *broker or dealer under the Securities*
24 *Exchange Act of 1934 (15 U.S.C. 78a*
25 *et seq.),*

1 “(V) an affiliate of a person de-
2 scribed in any of subclauses (I)
3 through (IV), or

4 “(VI) an employee, agent, or reg-
5 istered representative of a person de-
6 scribed in any of subclauses (I)
7 through (V).

8 “(ii) *AFFILIATE*.—The term ‘affiliate’
9 means an affiliated person, as defined in
10 section 2(a)(3) of the Investment Company
11 Act of 1940 (15 U.S.C. 80a–2(a)(3)).

12 “(iii) *REGISTERED REPRESENTA-*
13 *TIVE*.—The term ‘registered representative’
14 means a person described in section
15 3(a)(18) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78c(a)(18)) or section
17 202(a)(17) of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–2(a)(17)).”.

19 **SEC. 3. EFFECTIVE DATE.**

20 *The amendments made by this Act shall apply with*
21 *respect to advice referred to in section 3(21)(A)(ii) of the*
22 *Employee Retirement Income Security Act of 1974 or sec-*
23 *tion 4975(e)(3)(B) of the Internal Revenue Code of 1986*
24 *provided on or after January 1, 2001.*